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B.P.Kumar-Vrs-UOI&Ors

OA No.260/00467/2014

Order dated – 07.08.2014

CORAM

**HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL)
HON'BLE MR. R. C. MISRA, MEMBER (ADMN)**

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This OA has been filed by the Applicant seeking to quash the order of rejection 19.05.2014 in which his prayer to appoint him in the post of Junior Trackman & Helper II has been rejected on the ground of unfitness in the prescribed medical standard with further prayer to direct the Respondents to issue appointment order in his favour in the post of Junior Trackman & Helper II. By way of ad interim measure he has prayed for direction to the Respondent No.2 to refer him along with all the medical certificates to any eye expert for an independent report.

2. The matter was listed on 23.06.2014 when after considering the rival contentions of the parties this OA was admitted and notice was directed to be issued to the Respondents requiring them to file their counter, if any and the matter was directed to be listed on 9.7.2014 for considering issuance of ad interim order after filing the objection, if any, as prayed for by Mr.T.Rath, Learned Standing Counsel for the Railway. Thereafter, the matter was listed on 17th July, 2014 and on the prayer of Mr.A.Mohanty, Learned panel counsel for the Railway two weeks' time was allowed to file his reply to the ad interim order.

3. Respondents have filed their objection in which it has been stated that the prescribed medical standard B-1(Bee one) for recruitment to the post of Trackman and Helper is essential. The medical test was done in the Railway hospital. The applicant was examined twice one is at Khurda Hospital and another was at Visakhapatnam (Waltair) Hospital but each time he was found unfit in the prescribed medical standard B-1 (Bee One). Therefore, his prayer to refer to any eye expert for an independent report is not permissible in the eyes of law.

4. Heard Mr. N. R. Routray, Learned Counsel for other Applicant and Mr. A. Mohanty, Learned panel Counsel for the Railway. By placing reliance on the medical reports given by Dr. Samir Patra, Eye Specialist, RGH and Patna Medical College Hospital, Patna certifying that the applicant is fit for B-1 category has contended that in view of the variance of the opinion between the report of Khurda Hospital and of at Visakhapatnam (Waltair) Hospital and Dr. Samir Patra, Eye Specialist, RGH and Patna Medical College Hospital, Patna third opinion will diminish the dispute. Accordingly, he has prayed for grant of the ad interim order as prayed for by him in the OA. On the other hand, Mr. Mohanty has strongly objected to such prayer of the applicant by stating that the medical certificates produced by the applicant do not contain details wherfrom he has obtained by him and the monogram are therefore not acceptable in the eyes of law and, therefore, in case such prayer of the applicant is allowed this will create a precedent and the

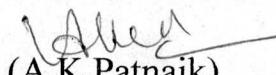
order will be an eye opener for other similarly situated candidates.

Hence he has resisted for granting any such order at this stage.

5. We have considered the rival contentions' of the parties and perused the records. Admittedly, the applicant was selected for appointment to the post in question through an open competitive examination but he has been declared disqualified because of his unfitness in particular medical standard. As it appears, a doubt has crept up in his mind in view of the variance reports. Every action/decision of the Government especially when the same is involved in the livelihood of a citizen must be free from suspicion, fair and transparent which is sine qua non and needs no elaboration. The applicant's prays to direct the Respondents as ad an interim measure to refer him to any eye expert for an independent report and we feel that no prejudice will be caused in case such prayer of the applicant is allowed at this stage. Considering all aspects of the matter, we direct the Respondent No.2, as an ad interim measure, to re-examine the applicant through an expert and submit the report to be given by the Doctor in a sealed cover for the perusal of this Tribunal. The exercise shall be completed within a period of 30(thirty) days from the date of receipt of copy of this order.

Copy of this order be given to Learned Counsel for both sides and sent to Respondent No.2 for compliance.

(R.C.Misra)
Member (Admn.)


(A.K. Patnaik)
Member (Judicial)